

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

DELBERT E. McNEIL, JR., )  
Petitioner, )  
vs. ) NO. CIV-05-0843-HE  
ERIC FRANKLIN, Warden, )  
Respondent. )

## ORDER

This case is before the court on the Report and Recommendation of Magistrate Judge Gary M. Purcell. Petitioner, a state prisoner appearing pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Judge Purcell for review. Judge Purcell issued his Report and Recommendation, recommending that the petition be denied. The matter is currently before the court on petitioner's objection to the Report and Recommendation.<sup>1</sup>

Having considered the matter de novo, the court concurs with Judge Purcell’s conclusion that petitioner has procedurally defaulted his claims and has failed to demonstrate either cause and prejudice for his default or a fundamental miscarriage of justice based on the application of a procedural bar to his claims. See, e.g., Bridgeforth v. Ward, No. 02-6085, 2004 WL 100513, at \*\*3-4 (10th Cir. Jan. 22, 2004).<sup>2</sup> Accordingly, the Report and

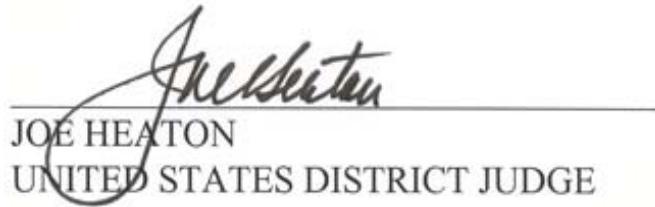
<sup>1</sup>Because petitioner has objected to the Report and Recommendation, the matter is reviewed de novo. 28 U.S.C. § 636(b)(1)(C).

<sup>2</sup>Bridgeforth is an unpublished decision cited for persuasive value only pursuant to 10th Cir. R. 36.3(B).

Recommendation is **ADOPTED** in its entirety and petitioner's petition for writ of habeas corpus is **DENIED**.

**IT IS SO ORDERED.**

Dated this 13<sup>th</sup> day of January, 2006.



Joe Heaton  
JOE HEATON  
UNITED STATES DISTRICT JUDGE

A handwritten signature of "Joe Heaton" is written over a solid horizontal line. Below the signature, the name "JOE HEATON" is printed in capital letters, followed by "UNITED STATES DISTRICT JUDGE" on a new line.